

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FRANCISCO GAILE GUYTON,

Petitioner,

No. CIV S-02-1377 FCD GGH P

vs.

GAIL LEWIS, et al.,

Respondent.

ORDER

Petitioner is a state prisoner proceeding through counsel with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On December 7, 2005, the court denied petitioner's habeas corpus petition and judgment was entered. Petitioner did not appeal.

On June 5, 2006, petitioner, through counsel, filed a motion to reopen the time to file an appeal and a request to be relieved as counsel of record. Notices of appeal must be filed within thirty days after the entry of judgment. Fed. R. App. P. 4(a)(1)(A). The time for filing an extension of time to file a notice of appeal has run. Fed. R. App. P. 4(a)(5)(the district court may grant an extension of time to file a notice of appeal if a party so moves no later than thirty day after the time prescribed by Rule 4(a) expires).

The district court may reopen the time to file an appeal if the following conditions are satisfied:

1 (A) the court finds that the moving party did not receive notice under Federal Rule  
2 of Civil Procedure 77(d) of the entry of the judgment or order sought to be appeal  
within 21 days after entry;

3 (B) the motion is filed within 180 days after the judgment or order is entered or  
4 within 7 days after the moving party receives notice under Federal Rule of Civil  
Procedure 77(d) of the entry, whichever is earlier; and

5 (C) the court finds that no party would be prejudiced.

6 Fed. R. App. P. (a)(6).

7 At the time judgment was entered, petitioner was represented by counsel. The  
8 record indicates that counsel received proper notice of the entry of judgment pursuant to Fed. R.  
9 Civ. P. 77(d). Accordingly, the motion to reopen the time to file an appeal is denied.

10 Good cause appearing, counsel's request to be relieved as counsel of record is  
11 granted. Because no further action on this case is warranted, petitioner shall represent himself  
12 and proceed pro se.

13 Accordingly, IT IS HEREBY ORDERED that:

14 1. Petitioner's June 5, 2006, motion to reopen the time to file an appeal is denied;

15 2. Counsel's June 5, 2006, request to be relieved as counsel of record is granted;  
16 petitioner shall proceed pro se;

17 3. The Clerk of the Court is directed to serve a copy of this order on petitioner  
18 himself; the Clerk is also directed to electronically serve a copy of this order on David Porter,  
19 Office of the Federal Defender.

20 DATED: 6/19/06

/s/ Gregory G. Hollows

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22 GREGORY G. HOLLOWES  
UNITED STATES MAGISTRATE JUDGE

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